IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6328 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

YAKUB @ YUSUF @ HUSSAIN @ KHANNO V PATEL

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR UR BHATT, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 04/10/2000

ORAL JUDGEMENT

The petitioner detenu has, by filing this writ petition under Art.226 of the Constitution of India, challenged the legality and validity of order of detention dt. 2.5.2000 passed by Respondent No.2 which he has passed in exercise of powers conferred upon him

under Sec.3(2) of the Gujarat Prevention of Antisocial Activities Act, 1985 (for short "the Act").

2. As per the papers of grounds of detention, it is the case of the detaining authority that petitioner detenu is a "dangerous person " within the meaning of Sec.2(c) of the Act and that his activities are prejudicial to the maintenance of public order. Before passing an order of detention, for arriving at his subjective satisfaction, the detaining authority placed reliance on four I.P.C. cases lodged against the detenu, which are referred to in grounds of detention. The detaining authority also placed reliance on statements of three un-named witnesses whose identity has not been disclosed by claiming privilege under Sec.9(2) of the Act. As per the papers, the statements of three witnesses were recorded on 26/3/2000, 28/3/2000 and 31/3/2000 respectively and the detaining authority verified the said statements of three witnesses on 24.4.2000 and 25.4.2000 respectively and he passed an order of detention on 2.5.2000 which is challenged in this writ petition.

3. Though Rule has been served upon each respondent,the respondents have not filed affidavit-in-reply in reply to the Writ Petition by controverting the grounds mentioned in Memo thereof.

4. Shri Prajapti, the learned advocate for the petitioner has argued that on behalf of detenu, advocate has made a representation on 19.6.2000, copy of which is at Page 17 (Annexure : C). It has been received by the Office of Hon'ble the Chief Minister, Gandhinagar on 20.6.2000 vide Page 19 (Annexure : D). He has argued that the State Government has not decided the said representation made by advocate for and on behalf of detenu, though about three and half months have been passed.

5. He has further argued that after recording the statements of three witnesses by concerned Police Inspector, the detaining authority verified the statements after about one month and for this delay, there is no explanation from the side of the detaining authority. He has further argued that though statements were verified by the detaining authority on 24.4.2000 and 25.4.2000, the detaining authority has passed an impugned order of detention on 2.5.2000. This delay is also not explained by the detaining authority. Therefore, the order challenged in this writ petition is vitiated by an inordinate delay caused by the State Government for not

deciding the representation, as early as possible and further that the detaining authority did not act promptly for making verification of said statements and also for passing an order of detention.

6. Shri H.R. Prajapati has cited an authority of ELESH NANDUBHAI PATEL Vs. COMMISSIONER OF POLICE, AHMEDABAD CITY AND OTHERS, reported in 1997(1) G.L.H. 381, wherein it has been held that unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. Thus this present case squarely falls within the four corners of aforesaid case cited by Shri Prajapati.

7. Shri Prajapti, the learned advocate for the petitioner has argued that the detaining authority has placed reliance on statements of three un-named witnesses whose identity has not been disclosed by claiming privilege under Sec.9(2) of the Act, but looking to the respective dates of statements, date of verification of said statements and date of passing order of detention, said claim of privilege is not genuine, and therefore, it violates mandate given in Art.22(5) of the Constitution of India. He has placed reliance an authority in case of KALIDAS CHANDUBHAI KAHAR Vs. STATE OF GUJARAT & OTHERS, reported in 1993(2) G.L.R. 1659, wherein it has been held that the detaining authority is expected to do some exercise before actually exercising the privilege under Sec.9(2) of the Act. He is required to do such exercise for verifying the correctness and genuineness of the facts stated in said statements. He had also to verify as to whether that persons are fictitious or real one. When he verified the statements on 24.4.2000 and 25.4.2000 respectively and passed an order of detention on 2.5.2000, it can be said that he had no time to do such exercise, and therefore, the privilege claimed by him is not genuine. Looking to the facts and circumstances of the present case, this present case squarely falls within the four corners of the case cited by Shri Prajapti.

8. In view of what is stated hereinabove, this writ petition is allowed. The order of detention dt. 2.5.2000 (Annexure : A) passed by Respondent No.2 with respect to petitioner-detenu is quashed and set aside. The petitioner detenu is ordered to be released forth with, if he is not required to be detained further for any criminal case or proceedings. Rule is made absolute accordingly. Direct Service is permitted.

Date: 04.10.2000. (H.H.MEHTA,J.)
ccshah